

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF ARIZONA**

8 Richard John Ichihara,  
9 Plaintiff  
10 -vs-  
11 Dennis Smith, et al.,  
12 Defendants.

CV-13-1200-PHX-ROS (JFM)

13 **Order and**  
14 **Report and Recommendation**

15 **BACKGROUND**

16 **Nature of Suit** - On August 28, 2012, the FBI arrested Defendant Carl David  
17 Evans (Evans), a former Cook Foreman at FCI-Phoenix, for having engaged in sexual  
18 activity with Plaintiff and another inmate, and for introducing contraband into the prison.

19 Plaintiff has sued Evans in his personal capacity, claiming Evans violated  
20 Plaintiff's Eighth Amendment rights by sexually abusing him. Evans has been served,  
21 but failed to respond. Default judgment has been granted, subject to a calculation of  
22 damages upon resolution of the remaining claims.

23 Plaintiff has also sued nine other current and former employees of the Federal  
24 Bureau of Prisons (the BOP Defendants).

25 Plaintiff alleges Defendants Frank Jacobs, John Dubsy, Kenneth Scheller,  
26 Stephanie Gardea, and Judy Benjamin, all of whom worked in the Food Service  
27 Department, violated his Eighth Amendment rights by failing to protect him from Evans;  
28 that they knew of facts from which they must have drawn the inference that Plaintiff was  
at risk of harm by Evans; and that they knowingly disregarded the risk.

Plaintiff alleges that Defendants Dennis Smith, Duane Gifford, Luis Roman and  
John Feeney, all of whom held supervisory/investigative positions at FCI-Phoenix,  
violated his Eighth Amendment rights by failing to protect him from Evans; that they

1 had prior knowledge of sexual abuse and failed to act; and that they failed to adequately  
2 train, supervise or discipline unnamed staff.

3 **Pending Dispositive Motion** - Defendants filed a Motion to Dismiss/Motion for  
4 Summary Judgment (Doc. 41) on September 15, 2014. The Court set a response  
5 deadline for November 13, 2014. (Order 9/17/14, Doc. 44.)

6 On October 29, 2014, Plaintiff filed his **first Motion to Extend** (Doc. 50) seeking  
7 a 40 day extension based on his pro se status, etc. The Motion was granted only in small  
8 part (finding that those factors were accounted for in the original schedule), giving him  
9 through November 17, 2014. (Order 10/31/14, Doc. 51.)

10 On November 14, 2014, Plaintiff filed a **second Motion to Extend** (Doc. 52),  
11 seeking an indeterminate extension based on his being in transit to Guam for post-  
12 conviction proceedings. The motion was granted, and Plaintiff was given through  
13 December 5, 2014 to respond. (Order 11/17/14, Doc. 54.) In addition, Defendants'  
14 deadline to depose Plaintiff was vacated, to be reset upon Plaintiff's return to Arizona.

15 On December 8, 2014, Plaintiff filed his **third Motion to Extend** (Doc. 57),  
16 based upon his being in Guam, and that he was still "awaiting his property." Plaintiff  
17 was granted through January 5, 2015 to respond, but was "cautioned that in light of the  
18 age of the motion, the time previously allotted, further extensions are unlikely to be  
19 granted." In addition, Plaintiff was ordered to "file a notice advising of the Court of his  
20 expected time of return to the custody of the Bureau of Prisons." (Order 12/11/14, Doc.  
21 58.)

22 On December 16, 2014, the Court granted Defendants' motion (Doc. 59) and  
23 vacated the remaining deadlines based on Plaintiff's absence. (Order 12/19/14, Doc. 60.)

24 On January 5, 2015, a **fourth Motion to Extend** (Doc. 61) was filed in Plaintiff's  
25 name, arguing that BOP staff "refused to permit plaintiff to travel with his court legal  
26 documents, exhibits, and evidentiary items" and "packed all plaintiffs legal materials in  
27 the storage" at FCI Tucson. The motion also argued that "Guam's Department of  
28 Corrections does not subscribe or provide federal case authority in any form." The

1 Court observed that Plaintiff had failed to provide the required notice of his expected  
2 return, and the motion failed to address the time of his return, and the motion was denied  
3 without prejudice. Plaintiff was given 7 days to provide the required notice regarding his  
4 expected return. (Order 1/6/15, Doc. 62.)

5 On January 27, 2015, a **Motion for Clarification and fifth Motion to Extend**  
6 (Doc. 65) was filed in Plaintiff's name. The Motion reported that Plaintiff had court  
7 dates set in Guam for February 13 and March 2, 2015. The motion sought a 90 day  
8 extension of time to respond to the dispositive motion.

9 In the meantime, on January 26, 2015, the Court issued an Order to Show Cause  
10 (Doc. 63) regarding Plaintiff's failure to provide the required notice. On February 20,  
11 2015, a Response (Doc. 67) was filed in Plaintiff's name, arguing his court dates were  
12 being moved and he had no way of knowing when he would be returned. The response  
13 further argued that it was taking 14-21 days for mail to reach Plaintiff. The attached  
14 certificate of service related that the filing was "provided to a friend to fly to USA and  
15 mail."

16 **Motion for Status Conference** - Defendants filed a Motion for Status  
17 Conference (Doc. 66) and a Supplement (Doc. 70), arguing that Documents 61, 65, and  
18 67 had not been authored or signed by Plaintiff, but by Mr. Burnam, the plaintiff in a  
19 related suit, *Burnam v. Smith, et al.*, CV-13-1804-PHX-ROS-MHB. The assert Mr.  
20 Burnam is currently incarcerated in California, where at least some of filings had  
21 originated. The Court set a conference to address those allegations and related concerns  
22 under Federal Rule of Civil Procedure 11, as well as the delays in Plaintiff responding to  
23 the pending Motion to Dismiss/Motion for Summary Judgment (Doc. 41) and the Order  
24 to Show Cause. (*See* Order 2/27/15, Doc. 69.)

25 Defendants seek the following orders: "(1) striking all questioned filings in this  
26 case (Docs. 61, 65 and 67); (2) expressly warning that such filings in the future may  
27 result in dismissal or other severe sanctions; (3) enjoining the non-party writer from  
28 further interfering in this case by filing false documents and/or engaging in the

1 unauthorized practice of law; and (4) issuing such other relief as the Court deems just  
2 and appropriate.” (Supplement, Doc. 70 at 3.)

4 **NON-DISPOSITIVE MATTERS**

5 **Unauthorized Filings** - At the hearing, Plaintiff disavowed authoring, signing, or  
6 authorizing the filing of the following papers which had been filed in his name: (1)  
7 Motion to Extend Time to Properly Respond, filed January 5, 2015 (Doc. 61); (2)  
8 Motion for Clarification/ Motion for Extension of Time, filed January 27, 2015 (Doc.  
9 65); and (3) Response to Order to Show Cause, filed February 20, 2015 (Doc. 67).

10 THE COURT: All right. And as to those documents that  
11 were referred to, 61, 65, and 67, those filings, did you not know that  
those were filed?

12 MR. ICHIHARA: I did not file those documents.

13 THE COURT: All right. Who filed those documents?

14 MR. ICHIHARA: I mean, counsel said it was Kenneth  
Burnam.

15 THE COURT: I'm sorry. Say again, Mr. Ichihara?

16 MR. ICHIHARA: Counsel just said -- Counsel Kozinets said  
it was Kenneth Burnam.

17 THE COURT: Well, are you telling -- hold on just a moment,  
Mr. Ishihara.

18 MR. ICHIHARA: Okay.

19 THE COURT: Are you saying that you had no knowledge,  
no control, no direction over those documents, those filings?

20 MR. ICHIHARA: I had no control over those filings of those  
documents.

21 \* \* \* \*

22 THE COURT: . . . Have you had any interaction with this  
individual, this Mr. Burnam in any way relating to your case?

23 MR. ICHIHARA: Have I had any interactions?

24 THE COURT: Yes.

25 MR. ICHIHARA: I've -- in any way? Mr. Burnam has  
communicated with me but I have not communicated with him to do  
my filings or anything like that.

26 THE COURT: All right. So to your knowledge, then, any  
filings that were made in your case that purport to bear your  
signature such as the ones we've been discussing, that those were  
filed completely without your authorization, approval, or  
knowledge?

27 MR. ICHIHARA: Correct. And, Your Honor, Mr. Kozinets,  
if there can be also a joint to stop this.

28 (R.T. 3/20/15, Doc. 75 at 15-17.)

Thus, the parties are in agreement that Plaintiff neither authored nor signed these

1 filings. (Plaintiff proffered nothing to refute the allegation that Mr. Burnam authored  
 2 them. But determining the true author is not necessary to the action the Court takes  
 3 herein.)

4 To show that Plaintiff authorized them (and thus should be bound by them),  
 5 Defendants have pointed to information contained within those filings that would require  
 6 knowledge of this case and Plaintiff's circumstances. Plaintiff admitted discussing the  
 7 case with Mr. Burnam, but steadfastly denied authorizing the filings.

8 Still, Plaintiff admitted he was aware of them.

9 MR. ICHIHARA: Okay.

10 So I did file a motion, I think it was March 11 is what I have  
 11 here, all written out in regards to the documents that were filed, 61,  
 65, and I was made aware of these filings by the return stamped  
 filed copies of the clerk of Court in regard to those filings.

12 (R.T. 3/20/15, Doc. 75 at 14-15.) Nonetheless, Plaintiff proffered no explanation for his  
 13 failure to raise the alarm when the Court issued orders on the basis of those filings.  
 14 Nonetheless, the Court finds insufficient evidence was presented in the hearing to make a  
 15 finding of Plaintiff's authorization of the filings.

16 Thus, the Court is left with a series of filings which have been rejected by  
 17 Plaintiff as having been filed by him. Accordingly, the Court will strike those filings  
 18 (Docs. 61, 65, 67).

19 In addition, the Court has entered an Order which was, in part, a ruling on the first  
 20 filing (Doc. 61). (*See* Order 1/6/15, Doc. 62.) That portion of the Order will be vacated.

21 **WARNING:** Further, the Court hereby cautions the author of the stricken filings  
 22 that such conduct (past or future) may result in the filer facing civil and/or criminal  
 23 sanctions, including contempt of court, practicing law without a license, sanctions for  
 24 unauthorized practice as an attorney before this court, fraud, etc.

25 **Pending Dispositive Motion** – With those filings and order vacated, the Court is  
 26 left with a dispositive motion (Doc. 41) with a response deadline of January 5, 2015, no  
 27 response from Plaintiff, and no timely motion to extend.

28 When pressed in the hearing, Plaintiff proffered no explanation for his failure to

1 seek a timely extension. At best, Plaintiff contended that he had not sooner responded to  
2 the dispositive motion because he had only recently received documents necessary to his  
3 response that he had mailed to his family in 2014. (Plaintiff was unclear whether he had  
4 mailed them in March or October.)

5 Accordingly, the Court finds that the response is overdue. Plaintiff was cautioned  
6 in the original scheduling Order on the motion: “The Court may, in its discretion, treat  
7 your failure to respond to the Motion as a consent to the granting of that Motion without  
8 further notice, and judgment may be entered dismissing this action with prejudice  
9 pursuant to Rule 7.2(i) of the Local Rules of Civil Procedure.” (Order 9/17/14, Doc. 44.)

10 In the Order filed December 11, 2014 (Doc. 44) granting Plaintiff’s earlier Motion  
11 to Extend (Doc. 57), the Court cautioned Plaintiff that in light of the age of the motion,  
12 and the time previously allotted, further extensions were unlikely to be granted.

13 Despite those warnings, Plaintiff has taken no action to seek an extension of the  
14 January 5, 2015 deadline. Even if believed (which as discussed hereinafter, the Court  
15 does not), Plaintiff’s complaints at the recent hearing about not having his paperwork or  
16 access to legal research while in Guam would not explain his failure to timely seek an  
17 extension of the deadline. Plaintiff’s Motion to Extend filed December 8, 2014 (Doc.  
18 57) was filed under the same conditions.

19 Based upon the foregoing, no response to the Motion to Dismiss / Motion for  
20 Summary Judgment will be allowed.

21 Moreover, a recommendation will be made that Plaintiff’s failure to respond be  
22 deemed a consent to a granting of the motion, pursuant to Local Civil Rule 7.2(i).

## 23 24 **DISPOSITIVE MATTERS**

25 **Failure to Prosecute** – Plaintiff has failed to respond to a pending dispositive  
26 motion for over three months after the expiration of the deadline. Further, Plaintiff has  
27 failed to a respond to the Court’s Order (Doc. 58) directing the filing of a notice with an  
28 expected date of return from Guam, and has failed to respond to an Order to Show Cause

(Doc. 63) directing him to show cause for his failure to respond to the earlier order.

Plaintiff has the general duty to prosecute this case. *Fidelity Philadelphia Trust Co. v. Pioche Mines Consolidated, Inc.*, 587 F.2d 27, 29 (9th Cir. 1978). Rule 41(b) of the Federal Rules of Civil Procedure provides that "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action." The Service Order cautioned Plaintiff: "If Plaintiff fails to timely comply with every provision of this Order, including these warnings, the Court may dismiss this action without further notice. *See Ferdik* 963 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any order of the Court)." (Order 3/25/14, Doc. 10 at 8.) The Order to Show Cause, filed January 26, 2015 warned:

Plaintiff has repeatedly failed to comply with the Court's orders, and has failed to prosecute this case. Plaintiff will be directed to show cause why this case should not be dismissed. *See* Fed. R. Civ. P. 41(b) (dismissal for failure to prosecute); *Link v. Wabash R. Co.*, 370 U.S. 626, 630 (1962) (authority of a court to dismiss sua sponte under Rule 41(b) for lack of prosecution); and *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-1261 (9th Cir. 1992) (a district court may dismiss an action for failure to comply with any order of the Court).

(Order, Doc. 64 at 1.)

The only response (Doc. 67) to these Orders (Docs. 58 and 63) has been disavowed by Plaintiff and stricken in this Order.

In *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-31 (1962), the Supreme Court recognized that a federal district court has the inherent power to dismiss a case *sua sponte* for failure to prosecute, even though the language of Rule 41(b) of the Federal Rules of Civil Procedure appears to require a motion from a party. Moreover, in appropriate circumstances, the Court may dismiss a complaint for failure to prosecute even without notice or hearing. *Id.* at 633.

In determining whether Plaintiff's failure to prosecute warrants dismissal of the case, the Court must weigh the following five factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk

1 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
2 merits; and (5) the availability of less drastic sanctions." *Carey*, 856 F.2d at 1440  
3 (*quoting Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). "The first two of  
4 these factors favor the imposition of sanctions in most cases, while the fourth factor cuts  
5 against a default or dismissal sanction. Thus the key factors are prejudice and  
6 availability of lesser sanctions." *Wanderer v. Johnson*, 910 F.2d 652, 656 (9th Cir.  
7 1990).

8 Here, the first, second, and third factors favor dismissal of this case. Plaintiff's  
9 failure to respond to the pending dispositive motion, failure to respond to the Court's  
10 order to provide notice of his anticipated return, and failure to respond to the Order to  
11 Show Cause all work against an expeditious resolution, the Court's ability to control its  
12 docket, and have so delayed these proceedings as to cause prejudice to Defendants.

13 The fourth factor, as always, weighs against dismissal.

14 The fifth factor requires the Court to consider whether a less drastic alternative is  
15 available. Here, Plaintiff has demonstrated a willingness to allow this case to linger  
16 unattended, months at a time, even in the face of threatened dismissal. Thus, it appears  
17 unlikely that other remedies short of dismissal will be efficacious.

18 A dismissal without prejudice will likely be effectively one with prejudice, given  
19 the elapse of time since the events alleged in the Complaint, which purportedly occurred  
20 in August, 2012 and earlier. Thus, a dismissal without prejudice would not effectively  
21 be a less drastic alternative.

22 Moreover, in light of Plaintiff's conduct, dismissal with prejudice is an  
23 appropriate response to Plaintiff's conduct. "Dismissal with prejudice and default on  
24 counterclaims, for willful and inexcusable failure to prosecute, are proper exercises of  
25 discretion under Federal Rules of Civil Procedure 41(b), 16(f), and the inherent power of  
26 the court." *Al-Torki v. Kaempfen*, 78 F.3d 1381, 1385 (9th Cir. 1996). As discussed  
27 hereinafter, the Court finds that Plaintiff has willfully failed to respond to the pending  
28 dispositive motion and this Court's orders. Moreover, Plaintiff has acknowledged sitting

1 by silently while some third party has perpetrated a fraud on this Court by filing things in  
2 Plaintiff's name.

3 Accordingly, the undersigned will recommend the dismissal of this action with  
4 prejudice.

5 **Dispositive Motion** – Plaintiff has failed to respond to the Motion to  
6 Dismiss/Motion for Summary Judgment filed by Defendants Smith, *et al.* (Doc. 41).  
7 The motion has been pending since September 15, 2014 (Doc. 41). Plaintiff has twice  
8 received extensions of time to respond. (*See* Order 10/31/14, Doc. 51; Order 12/11/14,  
9 Doc. 58.) Plaintiff has not sought further extensions.

10 Local Civil Rule 7.2(i) provides that “if the unrepresented party...does not serve  
11 and file the required answering memoranda...such non-compliance *may* be deemed a  
12 consent to the denial or granting of the motion and the Court may dispose of the motion  
13 summarily.” (Emphasis added.)

14 A district court may not grant a motion for summary judgment  
15 simply because the nonmoving party does not file opposing  
16 material, even if the failure to oppose violates a local rule. However,  
17 when the local rule does not require, but merely permits the court to  
grant a motion for summary judgment, the district court has  
discretion to determine whether noncompliance should be deemed  
consent to the motion.

18 *Brydges v. Lewis*, 18 F.3d 651, 652 (9th Cir. 1994). Here, given Plaintiff's prolonged  
19 and willful failure to respond to the motion, the undersigned concludes that the Court  
20 should exercise its discretion to deem the failure to respond a consent to the granting of  
21 the motion.

22 At the hearing, Plaintiff asserted as a basis for his failure to respond the issues  
23 raised in the various filings he has disavowed (Docs. 61, 65, and 67), which are disputed  
24 in Defendants' Motion for Status Conference (Doc. 66) and Supplement (Doc. 70). The  
25 undersigned found Plaintiff to lack credibility in his testimony. Plaintiff's demeanor as  
26 reflected by his voice and words, and his ultimate refusal to address the Court's  
27 impression that he had simply allowed the case to go unattended, all indicate that  
28 Plaintiff's original protestations of restrictions on his inability to respond to the

1 dispositive motion sooner were lacking in credibility.

2       Access to Legal Research – Defendants have presented a Declaration from the  
3 Guam Department of Corrections law librarian that Plaintiff has had and has utilized  
4 access to legal research while incarcerated in Guam. (Supplement, Doc. 70 at  
5 Attachment 3, Dahill Declaration.) At the hearing, although complaining about he  
6 burdensome procedures for research, Plaintiff made no allegation that any delay was  
7 related to his lack of access to legal research.

8  
9               MR. ICHIHARA: ... And, you know, as far as having access  
10 to a legal law library, where I am located there, is no legal law  
11 library. The legal library is located in another facility, which is in  
12 another village, and that has -- that coordination, I have been asking  
13 for coordination on that. I submitted a remedy request for that and I  
14 have not had a response for it yet. But the Government (inaudible)  
15 down here has recently -- is coordinating that so I can get these  
16 responses out. And it wasn't until yesterday where that was -- where  
17 I was allowed that opportunity.

18               THE COURT: Are you saying that yesterday was the first  
19 time that you were given the opportunity to do legal research?

20               MR. ICHIHARA: It wasn't legal research because I'm -- prior  
21 to leaving, I was just finalizing what it is that I had to do. And it  
22 wasn't until March 7 where I was allowed to get my legal work in.  
23 Now I am just completing whatever it is I was finishing up in  
24 Tucson. And, basically, I am just retyping my response and then I'm  
going to submit that. That was it. And that is as far as legal research,  
I've done all of that in Tucson prior to coming out.

(R.T. 3/20/15, Doc. 75 at 17.)

19       Indeed, Plaintiff has never before asserted he lacked access to legal research.  
20 (This issue was only raised in the filings Plaintiff has disavowed and at the hearing.)  
21 Moreover, nothing in the librarian's affidavit would support a contention that Plaintiff  
22 was unable to conduct research to respond to the motion. Further, Plaintiff proffered  
23 nothing to suggest that he had sought out such assistance until March 7, long after the  
24 expiration of the deadline for a response.

25       Access to Legal Materials – Defendants have also presented a Declaration from  
26 an office at FCI-Tucson showing that Plaintiff neither stored in FCI-Tucson nor took  
27 with him to Guam any legal files or materials. (Supplement, Doc. 70 at Attachment 2,  
28 Jackson Declaration.) At the hearing, Plaintiff did not deny these assertions, but instead

1 asserted that he had mailed his legal materials to his family In October while in Tucson,  
2 and his son only recently delivered them to him on March 7, 2015.

3 The Court finds Plaintiff's assertion to lack credibility. Plaintiff proffered no  
4 explanation why it took over four months for his papers to be delivered by his family,  
5 nor why he had not previously alerted the Court to his lack of access to these materials.  
6 Nor did he proffer any details as to show that he was dependent upon the materials  
7 recently obtained to respond to the Court's Order or the dispositive motion..

8 As to the former, all Plaintiff was required to do was to report to the Court his  
9 best estimate when he expected to be returned from Guam. That required, at most,  
10 information he possessed about the status of the Guam proceedings, and presumably  
11 readily available to him from his attorneys or the Court in that proceeding. Certainly,  
12 such information would not have been mailed by him to family while he was still in  
13 Arizona.

14 As to the latter, the dispositive motion is founded upon a failure to exhaust  
15 administrative remedies, and failure to state a claim and a claim of qualified immunity  
16 (all of which essentially presume the facts alleged by Plaintiff). Plaintiff fails to suggest  
17 what documents he lacked which were necessary to him addressing these issues.  
18 Moreover, most of them require little factual argument, but primarily legal argument.

19 Rather, Plaintiff's testimony at the hearing suggested that what he had recently  
20 obtained had been a draft response to the dispositive motion. Plaintiff proffers no reason  
21 why he could not have redrafted a response in the intervening four months.

22 Accordingly, the undersigned finds that Plaintiff has not been prevented from  
23 responding to the pending dispositive motion by the circumstances resulting from his  
24 transfer to Guam, but that he has willingly chosen to ignore the expiring and expired  
25 deadlines to respond (as well as the Court's orders). Therefore, the undersigned will  
26 recommend that Plaintiff's failure to respond be deemed a consent to the granting of the  
27 Motion to Dismiss / Motion for Summary Judgment, and that the motion be summarily  
28 granted.



1 having been filed, and no excusable neglect having been proffered, no response to  
 2 Defendants Smith, *et al.*'s Motion to Dismiss / Motion for Summary Judgment (Doc. 41)  
 3 will be permitted.

4 **IT IS FURTHER ORDERED** that the Clerk of the Court shall transmit a copy  
 5 of this Order to Plaintiff Burnam in *Burnam v. Smith, et al.*, CV-13-1804-PHX-ROS-  
 6 MHB.

#### 8 **RECOMMENDATIONS ON DISPOSITIVE MATTERS**

9 **IT IS THEREFORE RECOMMENDED** that in light of Plaintiff's willful  
 10 failure to prosecute this action, that this case be **DISMISSED WITH PREJUDICE**.

11 **IT IS FURTHER RECOMMENDED** that Plaintiff's failure to respond to  
 12 Defendants Smith, *et al.*'s Motion to Dismiss / Motion for Summary Judgment (Doc. 41)  
 13 be deemed a consent to the granting of such motion, and that the motion be summarily  
 14 granted.

15 **IT IS FURTHER RECOMMENDED** that Defendant Smith *et al.*'s Motion for  
 16 Status Conference (Docs. 66, 70) be **DENIED** to the extent that it seeks injunctive relief  
 17 against the filer of Documents 61, 65 and 67.

#### 19 **EFFECT OF RECOMMENDATION**

20 The foregoing recommendations are not an order that is immediately appealable  
 21 to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to *Rule 4(a)(1)*,  
 22 *Federal Rules of Appellate Procedure*, should not be filed until entry of the district  
 23 court's judgment.

24 However, pursuant to *Rule 72, Federal Rules of Civil Procedure*, the parties shall  
 25 have fourteen (14) days from the date of service of a copy of this recommendation within  
 26 which to file specific written objections with the Court. Thereafter, the parties have  
 27 fourteen (14) days within which to file a response to the objections. Failure to timely file  
 28 objections to any findings or recommendations of the Magistrate Judge will be

1 considered a waiver of a party's right to *de novo* consideration of the issues, *see United*  
2 *States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003)(*en banc*), and will constitute  
3 a waiver of a party's right to appellate review of the findings of fact in an order or  
4 judgment entered pursuant to the recommendation of the Magistrate Judge, *Robbins v.*  
5 *Carey*, 481 F.3d 1143, 1146-47 (9th Cir. 2007).

6 Dated: March 23, 2015

7 13-1200o Order 15 03 18 re Strike Filings.docx

8   
James F. Metcalf  
United States Magistrate Judge